

REMARKS

No claims have been examined. The Patent Office asserts the Specification is not in accordance with 37 C.F.R. §1.71 (b) or 1.71 (d) because there is little or no discussion of the prior art and what is lacking and or different about the invention versus the prior art, or how the invention satisfies a need that is not satisfied by the prior art or solves a problem that is not satisfied by the prior art or solves a problem in a manner different from the prior art, or any discussion whatsoever of the benefits of the invention or, for that matter, what it has been designed to achieve.

Applicant respectfully disagrees for at least the reason that 37 C.F.R. §1.71 (b) requires that the specification set forth the invention in such a manner as to distinguish it from other inventions and from what is old, describe a specific embodiment, explain the mode of operation or principle wherever applicable, and set forth the best mode. However, although Section 1.1 requires that the specification set out the invention in such a manner as to distinguish it from other inventions, that section does not require that it be distinguished in the specification from other inventions. For example, the specification must include a sufficient description of the invention that it can be distinguished from other inventions and what is old by referring to the specification and claims, such as in response to an Office Action or during an Appeal. However, at the time a specification is filed it may not be possible for an Applicant to provide discussion relating to prior art, as requested by the Patent Office. For example, the invention may be in a new field where there is no material or relevant prior art yet available. Second, the Applicant may not know of any relevant or material prior art. For instance, Applicant has a duty to disclose known material references. However, the Applicant may not know of any material references at the time of filing and, there is no duty for an Applicant to perform a prior art search when filing a patent application. On the other hand, it is the Patent Office's duty to make a colorable rejection of claims filed in an application if possible.

Likewise, 37 C.F.R. §1.71 (d) states that "a copyright or masked work notice may be placed in a design or utility patent application adjacent to copyright and mask work

material contained therein." Thus, §1.71 (d) does not require that any notice actually be placed in a patent application but states that a copyright or mask work notice "may" be placed therein.

Hence, for at least the reasons stated above, Applicant respectfully requests the Patent Office withdraw the assertion that the specification is not in accordance with 37 C.F.R. §1.71.

CONCLUSION

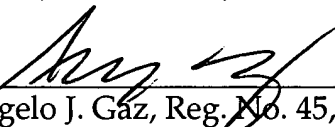
In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record and are in condition for allowance and such action is earnestly solicited at the earliest possible date.

If necessary, the Commissioner is hereby authorized in this, current, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§1.16 or 1.17. If a telephone interview would expedite the prosecution of this Application, the Examiner is invited to contact the undersigned at (310) 207-3800.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Post Office Box 1450, Alexandria, Virginia 22313-1450.

Andrea Costello October 7, 2005
Andrea Costello Date